

10-2032
PROPERTY TAX – EXEMPTION
TAX YEAR: 2009
SIGNED: 11-21-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.</p> | <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 10-2032 Tax Type: Property Tax/Exemption Tax Year: 2009 Parcel No. #####</p> <p>Judge: Phan</p> |
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Presiding:

Michael J. Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, Secretary, PETITIONER
 PETITIONER REP. 2, Board of Directors, PETITIONER
For Respondent: RESPONDENT REP. 1, Deputy Salt Lake District Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et al, on August 25, 2011. Based upon the evidence and testimony presented at the hearing and the prehearing submissions, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the “Taxpayer”) is appealing the decision of the Salt Lake County Board of Equalization (the “County”) in which the County denied the Taxpayer’s request for a property tax exemption for the 2009 tax year for Parcel No. #####. The Taxpayer had requested the exemption under Utah Code Sec. 59-2-1101 based on charitable use of the property. The County denied the exemption and the Taxpayer timely appealed the County’s decision to the State Tax Commission.

2. The facts were not in dispute. The Taxpayer is a nonprofit entity. The Taxpayer had assembled several parcels of property together in CITY 1, Utah, which it developed into a park for the benefit of the

public. There are no fees or charges for general public use. The combined property is an open park which can be used by anyone without restriction as to person. The use of the subject parcel is indistinguishable from the use of the other parcels that make up the park.

3. For the parcels used for the park other than the subject parcel, the County has granted the property tax exemption as property owned by a nonprofit entity that is used exclusively for a charitable purpose under Utah Code Sec. 59-2-1101(3)(d). It is clear that these other parcels were owned by the Taxpayer. However, for the subject parcel, the County denied the exemption on the basis that the Taxpayer was not the legal record title holder of the parcel.

4. The subject parcel had been acquired from the SCHOOL DISTRICT for \$\$\$\$ in 1998, with an installment payment provision. The Taxpayer paid \$\$\$\$ per year, each year, until the \$\$\$\$ was paid. A Special Warranty Deed was issued by the School District on July 17, 1998, conveying the subject parcel. However, this deed was not filed in the County Recorder's Office until October 17, 2008, after the payments had been made.

5. The School District's Special Warranty Deed did not convey the property to the Taxpayer directly, but instead to the president and secretary of the organization in their capacity as trustee for the Taxpayer.¹ The language of the Deed is as follows:

The Board of Education of SCHOOL DISTRICT, a body corporate and politic of the state of Utah, Grantor, ADDRESS, CITY 2 UT ZIP, hereby CONVEYS and WARRANTS . . . to PETITIONER REP. 2, President, and PETITIONER REP. 1, secretary of the PETITIONER, and their duly elected successors in office, as Trustees for the PETITIONER, Grantee, for the sum of \$\$\$\$ (\$\$\$\$) and other good and valuable consideration, the following parcel of real property . . .

6. PETITIONER REP. 2 and PETITIONER REP. 1 testified that it was the PETITIONER that was responsible for seeing that the yearly payments were made to the School District and that it would be the PETITIONER that would be responsible for payment of the tax. They did submit a document that had been signed July 17, 1998 along with the Deed that stated that the "Trustor agrees to pay all taxes and assessments" and other expenses.

7. Based on the language in the deed, when it was finally recorded in 2008, the County changed

¹ Effective May 11, 2010, a new provision in the Utah Uniform Probate Code may require the name and address of the trustee to be included on all recorded documents. See Utah Code Sec. 75-7-814(3). However, this provision was

the ownership of record for the subject parcel to PETITIONER REP. 2 and PETITIONER REP. 1 and assessed the property tax to them for the 2009 tax year. Prior to the recording of the deed, the property had continued to be assessed to SCHOOL DISTRICT, as the record title holder based on the County Recorder's information. As for the prior years it was treated as property owned by the SCHOOL DISTRICT, it was exempted from property tax under provisions of Utah Code Sec. 59-2-1101.

8. After the property tax was assessed for the 2009 year against the trustees, they deeded the property directly to the Taxpayer. So for the 2010 tax year, the Taxpayer was the owner of record at the County Recorder's Office and the County granted the exemption for that year.

APPLICABLE LAW

1. The following are exempt from property tax: . . . (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes; (Utah Constitution, Art. XIII, Sec. 3(1).)

2. The following property is exempt from taxation: . . . (d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes; (Utah Code Sec. 59-2-1101(3).)

3. (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board . . . (Utah Code Sec. 59-2-1006(1).)

DISCUSSION

In determining whether property is exempt from tax pursuant to the Utah Constitution Art. XIII, Sec 3 and Utah Code Sec. 59-2-1101(3), two requirements must be met. First, the property must be "owned by a nonprofit entity" and second, the property must be "used exclusively for religious, charitable, or educational purposes." In this matter the County did not contest that this property was used for charitable purposes and had, in fact exempted other adjoining parcels of property that had the same use. Further, the County did not contest the fact that the Taxpayer was a nonprofit entity. The basis for the County denying the exemption was their argument that the Taxpayer was not the legal record owner of the subject parcel for the 2009 tax year, because the property had been deeded to the Taxpayer's trustees, rather than directly to the Taxpayer. The representatives for the Taxpayer explain that they do not know why the SCHOOL DISTRICT had issued the

not in effect for the period at issue in this appeal.

deed for the subject parcel to them as trustees rather than to the Taxpayer directly. They felt it was an oversight or an error on the part of the School District and asked that this technicality not be used to disallow the exemption for the subject property.

The County points as support for its position to prior Tax Commission decisions which considered the exemption issue, including Utah Tax Commission Initial Hearing Order, Appeal No. 08-1308, in which the Commission concluded that the nonprofit entity must be the legal owner of the property in order to qualify for the exemption under Utah Code Sec. 59-2-1101(3).² These decisions are not directly on point because they involved a profit entity that held legal title to the property, while the charitable operation was managed and operated by a separate nonprofit entity. The County also points to the Utah Supreme Court's decision in *Parker v Quinn*, 23 Utah 332, 64 P. 961, (1901) in which the Court cautioned, "And an exemption will not be aided by judicial interpretation. It must be shown to exist by express terms of the enactment which it is claimed grants it. "The presumption is that all exemptions intended to be granted were granted in express terms. . . . the language relied on as creating the exemption should be so clear as not to admit of reasonable controversy about its meaning; for all doubts must be resolved against the exemption. (Citations Omitted)."³

In this case the County argued that it was the trustees and not the Taxpayer who were the owners of the subject parcel. The representative for the County indicated that he was unaware of a Utah case that dealt with a trustee holding title to the property. He did find two cases from other jurisdictions which he offered as support for the County's position. In *Johns Hopkins University v Board of County Com'rs of Montgomery County et al.*, 185 Md. 614 (1946), the Maryland Court of Appeals stated, "The general rule is that, unless otherwise

2 In that case the Commission cited to *Salt Lake County v Tax Comm'n ex rel. Greater Salt Lake Recreation Facilities*, 596 P.2d 641, 643 (Utah 1979).

3 See also more recent decisions of the Utah Supreme Court regarding tax exemptions. In *Board of Equalization of Utah County v. Intermountain Health Care, Inc. and Tax Comm'n of the State of Utah*, 709 P2d 265, (Utah 1985) the Court stated "[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed." And later, in that case the Court stated "[U]nlike the courts described in the foregoing comment, this Court recently reaffirmed its commitment to the doctrine of strict construction as applied to the charitable exemption provision contained in the Utah Constitution." Additionally, the Utah Supreme Court has clarified in *MacFarlane v. State Tax Comm'n*, 2006 UT 18, ¶19 that first the plain language of the statute must be considered. In that case the court found, "While we agree that the rule of strict construction applies to tax exemptions, this rule is only a secondary consideration that does not always come into play. "[T]he rule of strict construction should not be utilized to defeat the intent of the legislative body."³ (Citing *State Dep't of Assessments and Taxation v. Blecher*, 553 A.2d 691, 695 (Md. 1989). The Court in *MacFarlane* further provided, "While we recognize the general rule that statutes granting credits must be strictly construed against the taxpayer, the construction must not defeat the purposes of the statute." The best evidence of that intent is the plain language of the statute . . ." *Id.* (Citations Omitted.)

prescribed by statute, the trustee as the owner of the legal estate would be assessed with the value of the land. As stated in Cooley on Taxation (4th Ed.) Sec. 1097: “By the owner of property for the purpose of assessment is meant the legal, and not the equitable, owner; therefore trustees having the legal title are properly assessed.””

Reviewing these provisions from the case law and treatises, the County has appropriately assessed the tax to the trustee as the trustee is responsible for seeing that any taxes that are due are paid. However, these provision’s do not suggest that the trustees are the yard stick by which the tax obligation is measured. In this appeal the equitable owner is a nonprofit organization and there is no dispute that the property is used exclusively for a charitable purpose. Despite the County’s argument that the record title holders of the property were PETITIONER REP. 2 and PETITIONER REP. 1, it is clear from the language of the Deed that they do not own the property in their individual capacities but instead that it was deeded for the use of the PETITIONER. The property has, in fact, been used by the PETITIONER with other exempt parcels for a charitable purpose.

CONCLUSIONS OF LAW

1. In order to qualify for the property tax exemption at issue in this case, a taxpayer must show that the subject property as “owned by a nonprofit entity” and “used exclusively” for charitable purposes. See Constitution of Utah Art. XIII, Sec 3 and Utah Code Ann. Sec. 59-2-1101(3).

2. The County does not challenge that this property was used for charitable purposes. However, the County argues that the record title holder of the property for the 2009 tax year was not the Taxpayer, but instead the trustees for the Taxpayer. The Taxpayer argues that this was caused by an error or oversight. It is clear from the language of the deed, that the School District did not deed this property to PETITIONER REP. 2 and PETITIONER REP. 1 in their individual capacities but instead as trustees for the PETITIONER. In fact it was deeded to them as trustees and their duly elected successors in office. Although the County’s citations to case law support the position that the trustee is responsible for paying any tax due, they do not support the position that the exemption is to be determined on the basis of the trustee’s status. In the case cited by the County, *Hopkins*, 185 Md. 614 (1946), the Maryland Court of Appeals concluded that although Johns Hopkins University was the legal title holder to the property, and the U. S. Government was only the equitable title holder, the property was not subject to property tax based on federal provisions exempting property owned by the U.S. Government.⁴ It is clear that the PETITIONER was the equitable owner of the subject parcel. There

was no dispute that the PETITIONER is a nonprofit entity and, therefore, the ownership criteria set out in the Constitution and Utah Code Sec. 59-1-1101(3) has been met. It was undisputed by the County that the subject parcel was used exclusively for charitable purposes with other parcels as a public park, and there was no difference in the use of the subject and these other parcels. The other parcels were deemed exempt from taxation by the County, and the subject was not, based solely on the record title owner of each parcel. The subject property meets the exclusive use criteria set out in the Utah Constitution, Art. XIII, Sec. 3(1) and the Utah Code Sec. 59-2-1101(3).

3. The courts have held that “exemptions should be strictly construed and one who so claims has the burden of showing his entitlement to the exemption.” See *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980). See also *Board of Equalization of Utah County v. Intermountain Health Care, Inc. and Tax Comm’n of the State of Utah*, 709 P.2d 265, (Utah 1985), in which the Court stated “[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed.” The Taxpayer has met this burden of showing that the subject property qualifies for the exemption set out at Utah Code Sec. 59-2-1101(3).

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property is exempt from property tax for the tax year 2009. The Salt Lake County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

4 There is a Utah case which dealt with the State of Utah being the legal title holder as trustee but it was not addressed by either party. *Duchesne County v State Tax Commission*, 104 Utah 365 (1943).

Appeal No. 10-2032

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.